Vermont Superior Court
Filed 09/11/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
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CIVIL DIVISION
Case No. 26-CV-01634

Keren Sita v. State of Vermont , et al

ENTRY REGARDING MOTION

Title: Motion; Motion for Leave to File Motion to Amend Complaint Out of Time; for Leave to Amend Complaint (Motion: 5; 6)
Filer: Keren T Sita; Keren T Sita
Filed Date: July 06, 2026; July 06, 2026

The motion is GRANTED IN PART and DENIED IN PART.

Plaintiff Keren Sita has filed a motion to amend her complaint out of time following the dismissal of the State of Vermont as a Defendant in this case.

Motion for Leave to File Out of Time

Procedurally, the Court dismissed Ms. Sita's claims against the State on June 4, 2026 but gave her 14 days to seek to amend the complaint to assert any claims against the State in a manner that would comply with Rule 8(a) and that would state a claim on which relief could be founded. Ms. Sita admits that she did not comply with this deadline but seeks an opportunity to present her amended complaint approximately 30 days following the Court's dismissal.

Some Court deadlines have a degree of flexibility, and some have jurisdictional consequences. For example, a discovery deadline can often be extended and late filings are permitted because the purpose of the deadline, timely transmittal of information, must ultimately serve the end of producing the information and often involve negotiations between the parties. See V.R.C.P. 26(h). In contrast the deadline at the end of a case when an appeal must be taken is treated as a sacrosanct division between active proceedings and finality. See *In re Town of Killington*, 2003 VT 87A, ¶ 15 (noting that a missed appellate deadline can only be extended on narrow and limited grounds of excusable neglect).

In the present case, the deadline set by the Court sits within a grey area. In one respect, the deadline was a point of finality. As a result of the Court's ruling, the State was effectively dismissed as a party. Yet, the Court did not grant final judgment or formal dismissal to the State. The State was and remains a party to this litigation, albeit one with a foot out the door. At the

same time, Ms. Sita's motion is not terribly tardy. Her motion is filled just beyond 30 days. Additionally, it is a remedial motion as motions to amend are given liberal consideration and are favored to bring claims forward for clarity and adjudication on the merits. See *Colby v Umbrella, Inc.*, 2008 VT 20, ¶ 4 (describing the liberal application of Rule 15 amendments).

In summation, the weight of these factors favors consideration of Plaintiff's motion to amend on the merits of the proposed amendments. Therefore, the Court **Grants** Plaintiff's motion for leave to file her motion to amend beyond the deadlines established in the Court's June 4, 2026 Order and will consider her motion to amend filed on July 6, 2026.

Motion to Amend

Plaintiff seeks to amend her complaint against the State in two ways. First, she adds details indicating that she reported her roommate's alleged bad behavior and rule violations to the State during her weekly calls to renew her motel voucher. Second, she includes a new claim of negligence against the State for its failure to investigate her claims or intervene when the motel declined to renew her housing.

Under V.R.C.P. 15(a)(2), a motion to amend should be granted with liberality. The Court is to "freely give leave when justice so requires." V.R.C.P. 15(a)(2). The "trial court must be mindful of the Vermont tradition of liberally allowing amendments to pleadings where there is no prejudice to the other party." *Colby*, 2008 VT 20, at ¶ 4 (citing *Tracy v. Vinton Motors, Inc.*, 130 Vt. 512, 513 (1972)). A motion to amend, however, may be denied if the motion to amend demonstrates undue delay, bad faith, a futility to the amendment, and prejudice to the opposing party. Id. (quoting *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982)).

The Court understands the issue of futility to incorporate similar standards as a Rule 12(b)(6) motion to dismiss for failure to state a claim. To determine whether a complaint survives a motion to dismiss, the Court assumes the factual allegations in the complaint are true. *Colby*, 2008 VT 20, at ¶ 5. The court will only grant the motion if there are no facts or circumstances that would grant plaintiff relief. Id. This is because the purpose of a motion to dismiss for failure to state a claim is "to test the law of the claim, not the facts which support it." *Brigham v. State of Vermont*, 2005 VT 105, ¶ 11 (quoting *Powers v. Office of Child Support*, 173 Vt. 390, 395 (2002)). Courts rarely grant motions to dismiss for failure to state a claim. *Colby*, 2008 VT 20, at ¶ 5; see also *Kaplan v. Morgan Stanley & Co., Inc.*, 2009 VT 78, ¶ 7.

In this case, Plaintiff's amendments do not alter the fundamental problem with her claims against the State. Plaintiff's pleadings still do not demonstrate what kind of duty the State owed to her or what kind of control it exercised over the Budget Inn, a non-state private actor.

Assuming for the purposes of this analysis that Ms. Sita communicated her complaints to the State, and that it was aware of them, this still does not change the State's lack of control over the private actors.

For Plaintiff's negligence claims, this means that she cannot, as a matter of law, show that the State owed her a duty of care to (1) investigate her complaint or (2) act on the Budget Inn's decision to decline her residency.[1] As the State correctly notes in its opposition, the law generally does not recognize an obligation to control the actions of third parties. See *Stocker v. State*, 2021 VT 71, ¶ 14. Plaintiff has not cited to any express statutory duty or obligation that would have obligated the State to take action, and there is no business relationship between the State and the Budget Inn that would give the State the right to control or interfere with an decision that the private motel made regarding its room vacancy. The program simply provided payment vouchers to Plaintiff, which she was free to use on Budget Inn or any other qualifying motel in the program.

Similarly, the new facts do not change the analysis regarding Plaintiff's common benefits claims under Article 7 of the Vermont Constitution. See *Brown v. State*, 2018 VT 1, ¶ 17 (common benefits claim requires, inter alia, a "denial of a common benefit due to disparate and arbitrary treatment when compared to others similarly situated … [and] that the denial directly favors another particular individual or group."). In this respect, it is important to separate between what Plaintiff alleges happened and who did it. The amended pleadings indicate that Plaintiff made complaints concerning her roommate's violations of the rules, for which the Budget Inn took no action, and then the Budget Inn declined to extend her stay. In this formulation, there is no benefit or privilege or disparate treatment alleged to have come from the State.

For these reasons, Plaintiff's claims against the State indicate futility as they fail to make out a claim against the State or show a factual or legal basis for liability on either Plaintiff's

[1] A claim for negligence has four elements: (1) defendant owed a legal duty to plaintiff; (2) defendant breached that duty; (3) the breach actually and proximately caused plaintiff's injuries; and (4) plaintiff suffered injuries. *Ziniti v. New England Central Railroad, Inc.*, 2019 VT 9, ¶ 15. The existence of a legal duty is primarily a question of law. *Endres v. Endres*, 2008 VT 124, ¶ 11.

negligence claim or her common benefits claims. Therefore, Plaintiff's motion to amend is **Denied** as it concerns the State of Vermont. The State of Vermont remains dismissed as a party.

Notwithstanding this denial concerning the State's claims. Plaintiff's amended complaint demonstrates a significant improvement and clarification over her previous draft as far as it concerns the remaining Defendants in this case. To that end, the Court will **Grant** Plaintiff's Motion to Amend, **in Part** to permit her to remove the claims against the State of Vermont and to file the amended complaint against the Budget Inn and Marissa Betancourt.

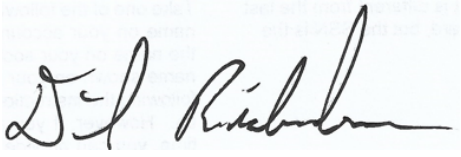
ORDER

Plaintiff's motion for leave to file a motion to amend her complaint is **Granted.** Plaintiff's motion to amend is **Granted in Part** and **Denied in Part.** The portions of the amended complaint seeking to assert claims against the State of Vermont remain insufficient as a matter of fact and law and are **Denied.** The unopposed portions concerning Defendants Budget Inn and Betancourt are **Granted**.

In furtherance of this ruling, Plaintiff shall prepare a revised version of her amended complaint, which removes the State of Vermont as a party and the claims against it, and she shall file it with the Court and the parties within 14 days of this Decision. Defendants Budget Inn and Betancourt shall have 21 days from the filing of the revised complaint to submit an answer or dispositive motion consistent with Rule 12. V.R.C.P. 12.

Within 14 days, the State shall prepare an entry of final judgment reflecting its dismissal for the Court to review. Any objections to this form shall be submitted within 7 days of its filing.

Electronically signed on 9/11/2026 2:29 AM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge